



**DEPARTMENT OF DEFENSE**  
**REGIONAL ENVIRONMENTAL COORDINATOR, REGION 9**  
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San Diego, California 92132-0058

5090  
Ser N40JRR.cs/0002  
January 20, 2010

Lucille Van Ommering  
California Air Resources Board  
1001 "I" Street  
Sacramento, CA 95825

Dear Ms. Van Ommering,

**SUBJ: DEPARTMENT OF DEFENSE COMMENTS TO PRELIMINARY DRAFT CAP  
AND TRADE REGULATION**

On behalf of the Department of Defense (DoD) military installations in California, and in addition to comments made at the 14 December 2009 workshop, we would like to submit these initial comments to the Preliminary Draft Cap and Trade Regulation (PDR). These comments were compiled by the DoD Regional Environmental Coordinator's office for Region 9 (DoD REC 9), which represents the Departments of the Navy, Army and Air Force for environmental matters in California. Considering the complexity of these regulations, and the complexity of a typical military installation, we are continuing to review the proposed regulations. We are also reviewing the proposal with our respective headquarters given the precedential nature of this subject and the ongoing consideration of cap and trade legislation in the US Congress.

**1990-2005 DoD Green House Gas (GHG) Reduction Efforts:**

DoD REC 9 staff has had extensive discussions with the California Air Resources Board (ARB) staff over the years regarding the breadth of post-1990 energy reductions in the federal sector. Energy conservation has been a federal agency priority since the passage of the National Energy Conservation Policy Act of 1978. The Energy Policy Act of 2005 subsequently established renewable energy use, building performance standards, energy reduction goals, and alternative fuel requirements. The Energy Independence and Security Act of 2007 and Executive Order (E.O.) 13423 of 2007 provided for further improvements to the energy performance of federal buildings, a 30% reduction in energy intensity between 2006 and 2015, a 20% reduction in fleet fuel use, and a 10% increase in alternate fuel use.

DoD's long-term commitment to these initiatives is evidenced by significant across-the-board reductions in electricity use. ARB currently proposes to use 2006 as the baseline for offsets in the cap and trade regulation. In the years prior to 2006, the Navy/USMC reduced its electricity use by 25% from 1990 levels.<sup>1</sup> The Air Force reduced its use during this time period by 34%,

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<sup>1</sup> This figure only includes bases that were not subject to the Federal Base Closure legislation and also reflect a 5% increase in building footprint.

while Army reductions were 31%. These reductions were achieved by alternative energy installation combined with various conservation technologies.<sup>2</sup>

Most recently, on 5 October 2009, President Obama signed E.O. 13514, "Federal Leadership in Environmental, Energy, and Economic Performance," which expands upon E.O. 13423. The new E.O. requires federal agencies, by June 2010, to prepare and submit to the Council on Environmental Quality and the Office of Management and Budget for review and approval a 10-year Strategic Sustainability Performance Plan (SSPP). One portion of the SSPP is dedicated to achieving sustainability goals and targets, including GHG reduction targets. The E.O. specifically requires annual reporting of both direct and indirect GHG emissions relative to a 2008 baseline. The new E.O. emphasizes the assumption of a leadership role by the DoD and other federal agencies in implementing GHG reductions and other sustainability initiatives.

#### **Credit for Pre -2006 Offsets:**

Many of the DoD's energy reduction initiatives emanating from the federal requirements referenced above will meet the formal "offsets" criteria and will be an important part of the DoD compliance strategy. Consider, for example, the Navy installation of San Clemente Island, which is not on the power grid; therefore, all power generated comes from liquid fossil fuels barged from the mainland. There is no other way to access "green power." In recognition of the impacts from this energy transfer, the Navy implemented an alternative energy project on San Clemente Island in 1998 comprising 675 KW of wind power, which supplies up to 15% of the island's power. We have asked for recognition of these efforts throughout the AB 32 implementation process and continue to do so today. Given the variability of the DoD mission and changing national security needs, we are particularly concerned about requirements for offsets should a "surge" occur due to training/mission needs. For this reason, we seek to ensure recognition of our past efforts.

In accordance with ARB's approved "Policy Statement on Voluntary Early Actions to Reduce Greenhouse Gas Emissions," we recommend that ARB consider moving the date for Offset Project Eligibility (page 64 of the PDR) from 31 December, 2006 back in time, to allow for recognition of significant projects such as the Navy's 1998 installation of wind turbines on San Clemente Island. As we understand ARB's rationale for the 31 December 2006 cut off, it corresponds to the date of implementation of AB 32. DoD installations in California have implemented many high quality projects that could be considered as offset credits in the California Cap and Trade market. Setting a date at 31 December 1997 will allow some of these projects to be eligible for offset credit generation and will reward the early actors in accordance with ARB's policy. An earlier offset project eligibility date is more in line with the legislatively mandated baseline year of 1990 and will allow consideration of renewable energy projects which take many years to implement.

#### **Surge Operations:**

In case of conflict or national security operations, DoD installations may experience rapid changes in activity levels, including increased energy and fuel use. These changes in activity level would be beyond the control of the individual installations or groups and may be sustained for significant periods of time. We would like to discuss options for special consideration for these periods, including linking surge with DoD's ability to reach back before 31 December,

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<sup>2</sup> Attached is a briefing provided by DoD REC 9 to ARB staff detailing these efforts (Enclosure (1)).

2006 for military-generated offsets, as discussed above. Another option is providing a temporary exemption for these surge periods from compliance with the cap and trade program. Our goal is to avoid a situation where the cap and trade mandates conflict with mission requirements.

**Definition of Facility:**

We have had meaningful discussion regarding the unique, world-wide reach of California's DoD installations, as well as the breadth of the services provided to the service members on base, analogous to municipal jurisdictions. Consistent with this viewpoint, ARB discussed an exception for military base operations in the preamble to the California mandatory GHG reporting regulation:

Another exception to the traditional facility definition is military bases. Some military bases are spread over many thousands of acres and encompass a wide variety of activities such as employee housing, medical facilities, airfield operations, aircraft repair, ship construction and repair, and other operations. Each of these operations could also be under the operational control of different branches of the military or military contractors within the confines of a base. ARB staff has thus provided the option for a military base to subdivide the base for reporting purposes into independent functional groupings, based on the types of operations performed on the bases. Through this mechanism, each base would not necessarily have to report as a single facility, but could subdivide based on "operational control" (defined in the regulation), and on major functional groupings such as aircraft repair and overhaul, or ship construction and repair operations. As with traditional "facilities," only those GHG sources specified within the proposed regulation would be reported, while unspecified sources such as residential heating and cooling would not be included.

Based on this rationale, ARB's mandatory reporting regulation definition of "facility" states:

Operators of military installations may classify such installations as more than a single facility based on distinct and independent functional groupings within contiguous military properties.

We would therefore request consistent treatment of DoD's military installations in the California cap and trade regulation. This avoids a scenario where a single power plant on a city-sized military installation results in the entire operations of the installation being subject to cap and trade requirements. We do not believe such an outcome would be consistent with how municipalities are being treated under ARB's final GHG reporting rule and under the preliminary draft cap and trade rule, and as such may be outside of the federal waiver of sovereign immunity.

**Transportation Fuels:**

The treatment of transportation fuels raises an issue for DoD in California. While the current proposal only includes gasoline and diesel,<sup>3</sup> placeholders exist for other transportation fuels. Given DoD's worldwide mission and the unpredictability of those missions, we sometimes move fuel between facilities. We are concerned that routine movement of fuel from a ship to shore, or

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<sup>3</sup> At least one DoD installation has a production facility creating biodiesel fuel from waste cooking oil and others are being considered. DoD would like to know if/how such production would be treated. DoD would not believe it appropriate to "penalize" a facility that produces biofuel from non-foodstocks.

from shore to ship or one of our island facilities could trigger cap and trade requirements. Our interpretation of this PDR is that the proper application is when fuel is purchased within California from a supplier who would be subject to compliance. Other movement of fuels, as part of the military mission function, should not be subject to regulation that could impact on mission needs and flexibility. Therefore, we would ask that fuel movements on behalf of the United States military or for military purposes be exempted from these requirements. Further, other specialized fuels, which are moved on behalf of the United States military or for military purposes, are not part of the transportation sector and we request that the regulation provide a similar exemption to avoid ambiguity. We note that addressing the DoD fuel movements in this manner would be consistent with the EPA's Mandatory Greenhouse Gas Reporting Rule (MRR) in Title 40 of the Code of Federal Regulations Part 98 at §98.6.

*From the MRR §98.6:*

*Exporter means any person, company or organization of record that transfers for sale or for other benefit, domestic products from the United States to another country or to an affiliate in another country, excluding any such transfers on behalf of the United States military or military purposes including foreign military sales under the Arms Export Control Act. An exporter is not the entity merely transporting the domestic products, rather an exporter is the entity deriving the principal benefit from the transaction.*

*Import means, to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:*

- (1) Off-loading used or excess fluorinated GHGs or nitrous oxide of U.S. origin from a ship during servicing.*
- (2) Bringing fluorinated GHGs or nitrous oxide into the U.S. from Mexico where the fluorinated GHGs or nitrous oxide had been admitted into Mexico in bond and were of U.S. origin.*
- (3) Bringing fluorinated GHGs or nitrous oxide into the U.S. when transported in a consignment of personal or household effects or in a similar non-commercial situation normally exempted from U.S. Customs attention.*
- (4) Bringing fluorinated GHGs or nitrous into U.S. jurisdiction exclusively for U. S. military purposes.*

*Importer means any person, company, or organization of record that for any reason brings a product into the United States from a foreign country, excluding introduction into U.S. jurisdiction exclusively for United States military purposes. An importer is the person, company, or organization primarily liable for the payment of any duties 680 on the merchandise or an authorized agent acting on their behalf. The term includes, as appropriate:*

- (1) The consignee.*
- (2) The importer of record.*
- (3) The actual owner.*
- (4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.*

*Supplier means a producer, importer, or exporter of a fossil fuel or an industrial greenhouse gas.*

**Geographic Coverage of Offsets:**

DoD has facilities through the country and the world and must manage these in a constantly changing environment. For this reason, we request that CA's cap and trade offsets include the widest geographic coverage. For example, if we seek to bring a new mission to California that would increase a cap we would want to have the opportunity to use reductions from elsewhere, e.g. the facility where the mission is coming from or other offset projects.

**Verification of Offsets:**

As we have discussed in our comments on the mandatory reporting rule, DoD is subject to unique requirements that pose issues for verification through third parties. We appreciate the inclusion of local air districts in the verification and support continued utilization of local air districts in the verification process of offsets.

**Three-Year Compliance Periods:**

We wish to express our support for the three-year compliance periods to enhance compliance options and flexibility with this very new program. Facilities will need to develop complex compliance strategies to comply with this regulation and the three-year window in which to implement the strategy will provide facilities the flexibility needed to do so while still meeting national security demands. As pointed out earlier, DoD's mission requirements can quickly change in response to world events. It is imperative that we retain the maximum flexibility for compliance.

**Destruction of Ozone Depleting Substances (ODSs):**

Page 63 of the PDR includes "Discussion of Concept--Ozone Depleting Substances (ODSs)." ARB is considering allowing offset projects not called out by AB32 "(such as destruction of ODSs that are no longer in production)." Overall, DoD supports this approach; however, we would note that some ODSs, though no longer produced, still serve a crucial role for critical applications, both commercial and military, as users continue to transition to non-ODSs. This is especially true for halon fire suppressants, such as Halon 1211 (bromochlorodifluoromethane,  $\text{CF}_2\text{ClBr}$ ) and Halon 1301 (bromotrifluoromethane,  $\text{CBrF}_3$ ), for which there are no viable alternatives. Military mission-critical applications on aircraft, ships, and ground tactical vehicles utilize these ODS's, as do civil aviation to protect the safety of the flying public and the oil and gas industry for production in cold climates. We would also note that federal policy requires federal agencies to offer any excess Class I ODS to the DoD ODS Reserve for continued use in military mission-critical applications before they can offer for sale or destruction, in recognition of these ongoing critical uses. Given these critical military mission and civil aviation applications, we recommend that halons not be considered for the ODS offset program until such time that it can be determined that adequate global supplies are available.

**Economic Considerations:**

We wish to express support for the importance of the fair economic incentive component to valuation of the market trading commodities of offsets and allowances. We understand that ARB has appointed a 17-member Economic and Allocation Advisory Committee (EAAC) to analyze and prepare a report, due January 2011, on the following:

- Allocation of allowances and use of their value
- Implications of different allowance allocation strategies (i.e., free allocation, auction, both).

We look forward to reviewing this report when it is released. We appreciate that ARB recognizes that course corrections may be necessary throughout this program to ensure there is equity in the financial distribution of these compliance options.

**Federal Fiscal Law:**

This letter serves as a place-holder to identify potentially unique federal fiscal law issues with respect to buying and selling market commodities to achieve compliance with this regulation. DoD is bound by strict congressional mandates as to authorization to spend money and then accompanying appropriations to accomplish Congress's goals. There is very little discretion within this process and as such, DoD will be evaluating this first of its kind regulation as to how it reconciles with federal fiscal law. We have engaged our fiscal lawyers, and expect to have additional comments as these requirements are more fully fleshed out in subsequent drafts.

**Harmonization of EPA and ARB Reporting Rules:**

The rapid proliferation of GHG regulations at both the state and federal level could cause significant administrative burdens as inventory calculation and reporting standards have not been harmonized. Consequently, reporting facilities will be required to track several different parameters and calculate various values for GHG emissions, often for the same sources. We note that ARB representatives have publicly stated the intention to harmonize the mandatory reporting under AB 32, which serves as the basis for the ARB's cap and trade program, with other GHG reporting rules, such as the US EPA Mandatory GHG Reporting Rule. We support such efforts and request that you consider harmonizing the PDR with Executive Order 13514 and the US EPA's plans for the Prevention of Significant Differences/Title V programs as well.

We appreciate the complexity of the effort you have undertaken and look forward to working with ARB as we continue our efforts to reduce our carbon footprint through the many programs already in place on our installations. We hope you continue to recognize our unique needs where we must have the flexibility to meet the ever-changing national defense needs of our country. My points of contact on this subject are Randal Friedman (619) 572-5037 and Mary Kay Faryan (619) 532-4301.

Sincerely,

A handwritten signature in black ink, appearing to read "C. L. Stathos", with a stylized flourish at the end.

C. L. STATHOS  
By Direction

Encl: (1) Department of Defense AB 32 brief of 25 Jun 07

# Department of Defense: AB 32 Discussion

# Greenhouse Gas/ Energy Reduction Goals

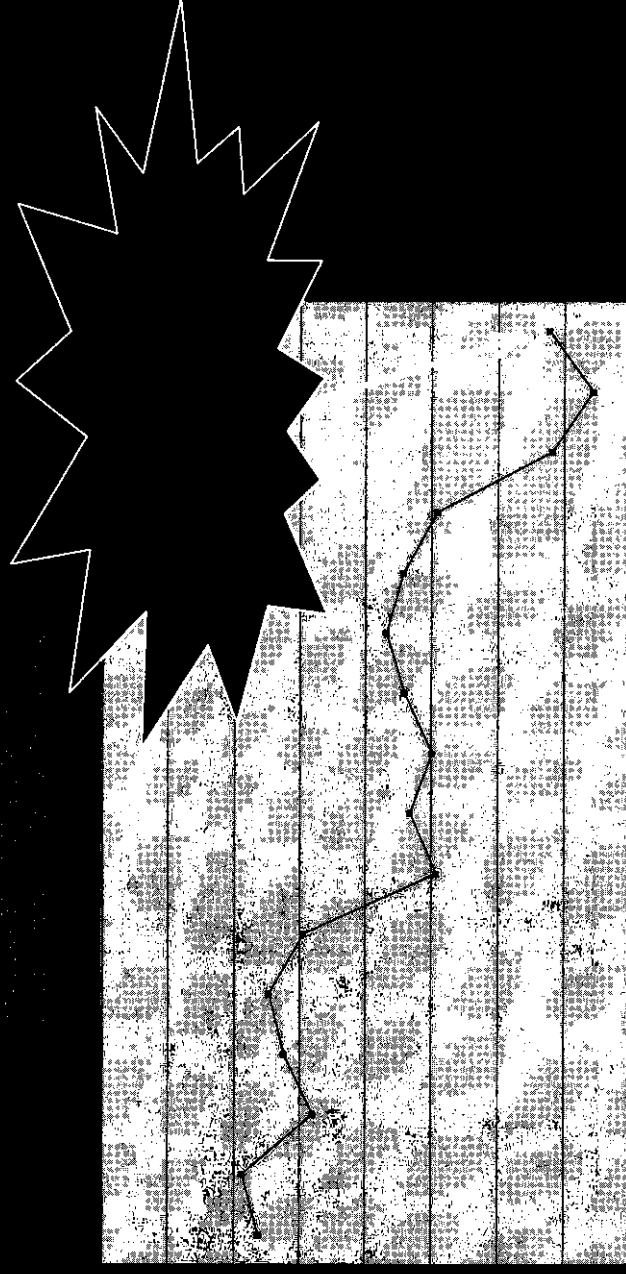
California (GHG)	Executive Order (Energy/GHG)	Congressional Requirements
1990 levels by 2020 (AB 32)	30% below 1990 levels by 2010 (historic EO 13123)	20% GHG reduction (EPACT 1992)
80% below 1990 levels by 2050 (EO S-0305)	30% below 2003 levels by 2015 or 3% annually (current EO 13423)	2% annual energy reduction goal (EPACT 2005)



# DOD Energy Programs

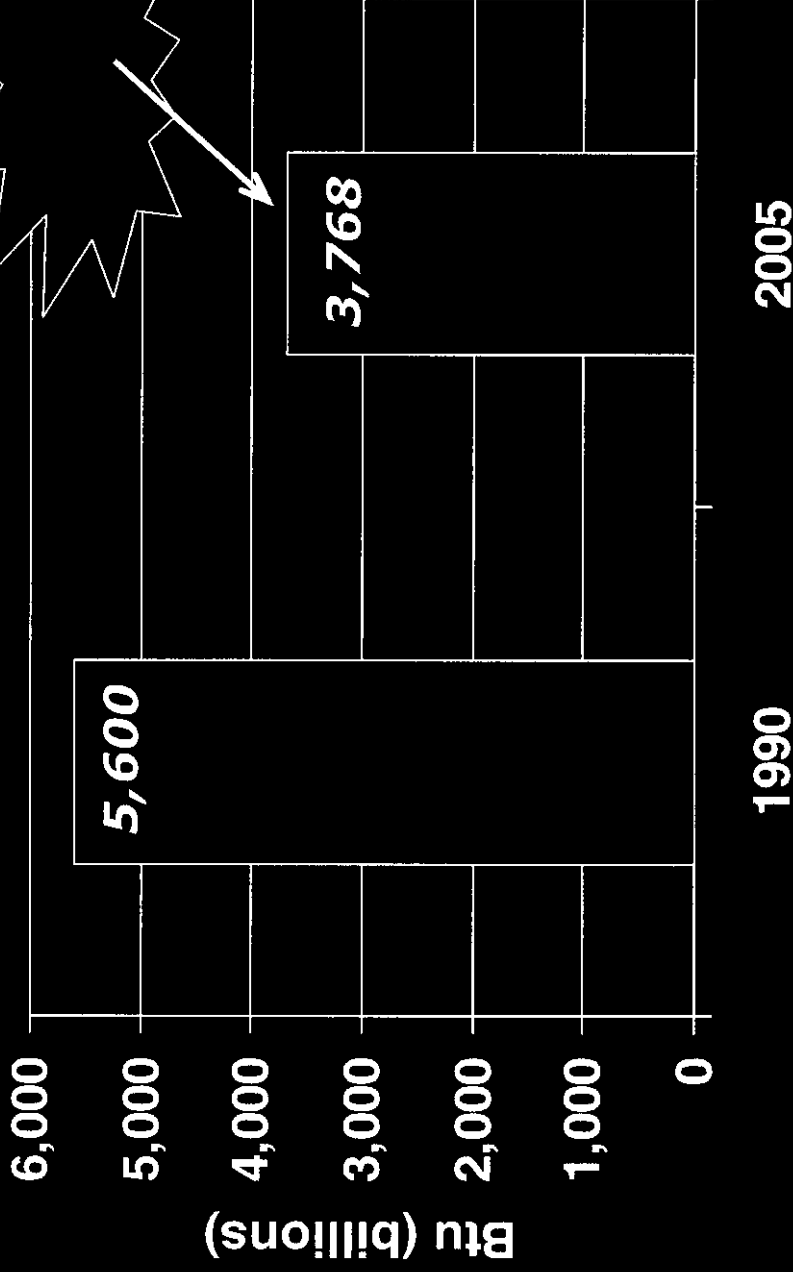
- ◆ **Energy Efficiency Projects**
- ◆ **Purchasing Renewable Energy**
- ◆ **Renewable Generation, Cogeneration**
- ◆ **New and Retrofit Facility Construction**
- ◆ **Energy Management - O&M**
- ◆ **New Technology Validation**
- ◆ **Training and Personnel Awareness**
- ◆ **Utilities Metering**
- ◆ **Dedicated Energy Managers**

# California DON Energy Reductions Achieved



# California Air Force Energy Reductions Achieved

Includes data from Beale, California ANGs, Edwards, Los Angeles, March, Onizuka, Travis, and Vandenberg  
Excludes BRAC'd installations

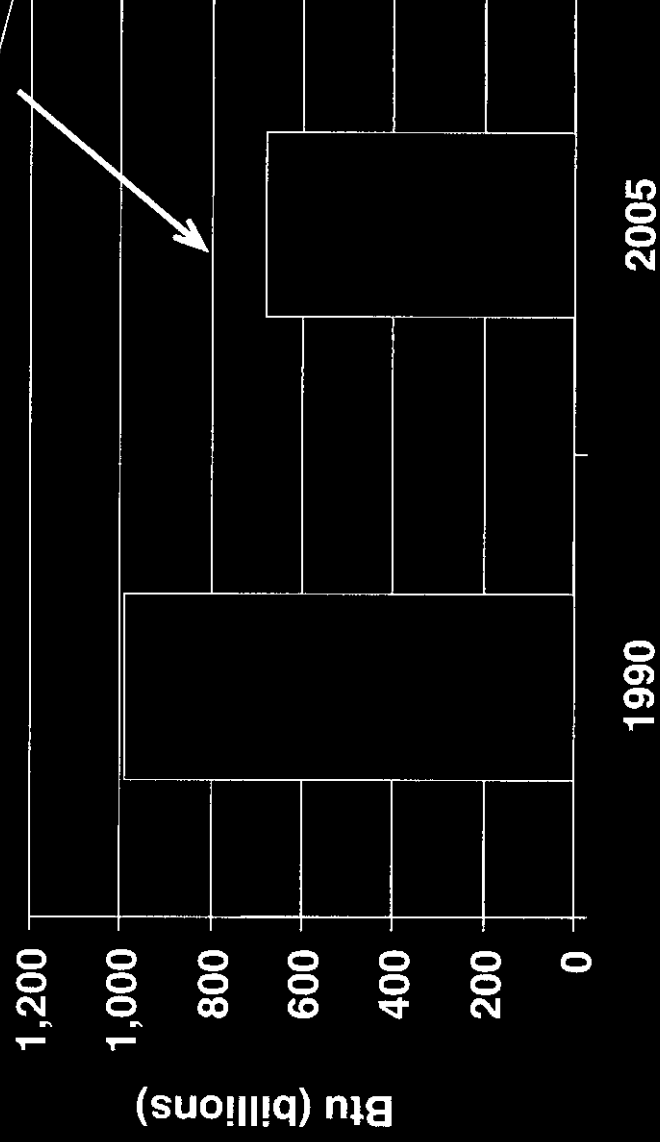
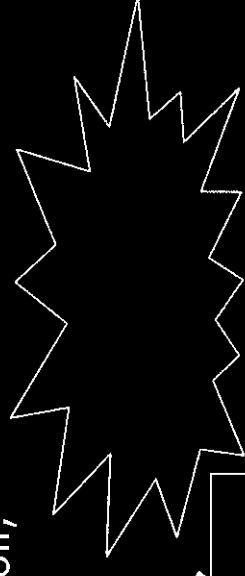


# California Army Energy Reductions Achieved

Includes data from ARNG Facilities,  
Fort Irwin, Sierra Army Depot, and  
Presidio of Monterey

Btu sources include electricity, distillate fuel oil,  
propane, and natural gas

Excludes BRAC'd Installations



# Greenhouse Gas Reductions – DoN Alternate Energy Sources

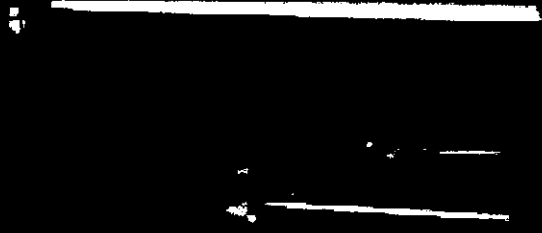


# Greenhouse Gas Reductions – DoN Alternate Energy Sources

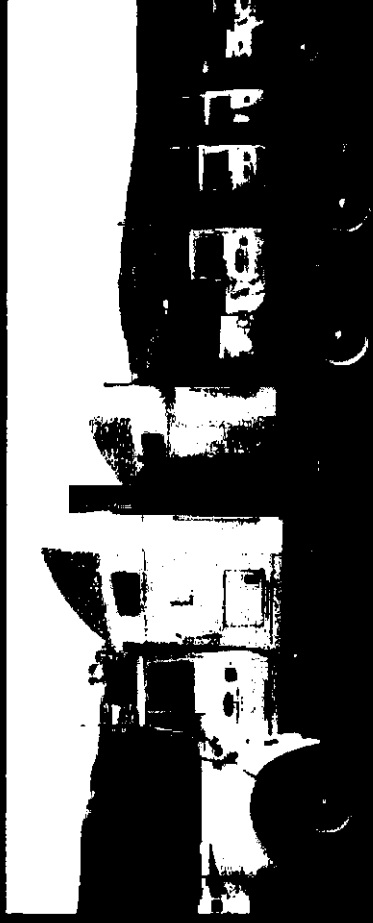
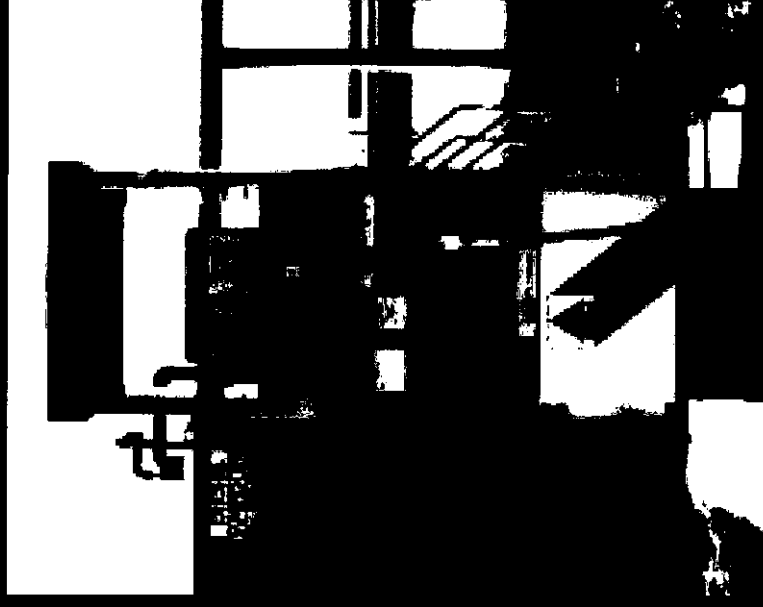
DoN has a goal to reduce greenhouse gas emissions by 15% by 2012. To achieve this goal, DoN is exploring a variety of alternate energy sources, including wind, solar, and geothermal. DoN is also exploring the use of biofuels and other renewable energy sources. DoN is committed to reducing its greenhouse gas emissions and is working to implement a variety of measures to achieve this goal.



DoN is committed to reducing its greenhouse gas emissions and is working to implement a variety of measures to achieve this goal.



# Greenhouse Gas Reductions – DoN Alternate Energy Sources



# Greenhouse Gas Reductions – DoN/USA Alternate Energy Sources

1 2 3 4 5 6 7 8 9 10 11 12





# Greenhouse Gas Reductions – USAF Alternate Energy Sources



Sept 2006

Story

# Greenhouse Gas Reductions – USAF Alternate Energy Sources



# AB 32 Discussion Items

- ◆ Recognition/credit for military reductions
- ◆ Exclusion of tactical sources
- ◆ Recognition of installation issues
  - Definition of facility
  - Incorporate US EPA Title V Guidance Document
- ◆ Resolve biodiesel issues